

DIVISION OF ADMINISTRATIVE LAW APPEALS

The Executive Office for Administration and Finance
Commonwealth of Massachusetts



**STRATEGIC PLAN-IN-BRIEF
2013-2015**

Issued February 14, 2013

RICHARD C. HEIDLAGE
Chief Administrative Magistrate

MESSAGE FROM THE CHIEF ADMINISTRATIVE MAGISTRATE

The mission of the Division of Administrative Law Appeals is to provide, on a timely basis and with limited resources, due process administrative adjudications that are a precondition of other agencies' operations. We are a "central panel," meaning that we are independent of the agencies for which we provide adjudications. We are therefore uniquely situated to provide adjudications and decisions that are both fair, independent and impartial in fact and that are perceived by the public to be so. In times of severely limited resources, we must

be as efficient as possible but still keep a focus on customer service. Our objective in preparing this plan is both to ensure that we are systematic in our approach to meeting our objectives of efficiency and customer service and to be transparent in setting our priorities.

Richard C. Heidlage
Chief Administrative Magistrate

This document was developed pursuant to Executive Order 540 which calls on state government to develop and publish strategic plans and institute performance management. As an organization affiliated with the Executive Office for Administration and Finance (A&F), the Division of Administrative Law Appeals 2013-2015 Strategic Plan aligns and supports the overarching goals set forth in the A&F Strategic Plan.

**Please send feedback
regarding this plan to:**

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MISSION, VISION AND POLICY CONTEXT

OVERVIEW

The Division of Administrative Law Appeals (DALA) is an independent agency that provides due process adjudications and other dispute resolution services for Massachusetts state administrative agencies.

General Jurisdiction

With regard to general jurisdiction, the Division's services are limited to providing due process adjudications only. Cases come to DALA in two ways: (1) by legislation mandating that certain types of cases be heard at DALA; and (2) upon request of an agency, subject to the approval of the DALA Chief Administrative Magistrate and the Secretary of Administration and Finance (A&F). Currently, DALA conducts hearings for approximately 20 state agencies, including the Civil Service Commission, the Contributory Retirement Appeal Board, the Board of Registration in Medicine, the Department of Public Health and the Fair Labor Division of the Office of the Attorney General.

Although for historical reasons DALA's name refers to administrative law "appeals," most of the Division's proceedings are not appellate in nature. Rather, they are an

integral part of DALA's operating agency clients' due process proceedings. Before an agency may take a final action affecting a person's rights, it must provide that person with the opportunity for a hearing to present any evidence he/she considers relevant to the agency's decision. In such cases, the agency may hold a hearing with its own personnel or it can refer the matter for hearing to DALA as a "central panel." In these cases, DALA conducts the hearing and makes a "recommended decision" to the agency. A Board of Registration in Medicine proceeding to sanction a medical doctor is one example of this type of case.

While most of the Division's proceedings are not appellate in nature, some cases truly are. For example, nursing homes that are aggrieved by a rate setting decision of the Division of Health Care Finance and Policy may appeal the rates to DALA. Other cases, however, are more hybrid in nature. For instance, in public employee retirement cases, if a member of a state or municipal retirement system is aggrieved by an action taken by the retirement board, he/she may "appeal" to the Contributory Retirement Appeal Board. Such cases are referred to DALA for hearing. While the proceeding is called an "appeal" under the statute, the proceeding is "*de novo*" in the

MISSION

General Jurisdiction: Provide the due process adjudications that are the pre-condition of other agencies' Final Agency Action

The Bureau of Special Education Appeals: Provide dispute resolution resources to resolve disputes among interested parties concerning special education services and procedural protections for students with disabilities

VISION

To be recognized as the best choice for providing due process administrative adjudications and other forms of administrative dispute resolution in the Commonwealth

For the Division's procedures to be recognized as the standard for administrative dispute resolution in the Commonwealth

sense that the prior proceeding before the retirement board is irrelevant for any future proceeding and the parties must make their full administrative record before the Division.

The Bureau of Special Education Appeals

The Bureau of Special Education Appeals (BSEA), a bureau within DALA, is primarily federally funded through a grant managed by the Department of Elementary and Secondary Education (DESE). The Bureau was transferred from DESE to DALA by Chapter 131 of the Acts of 2010 to ensure independence from any educational agency that could be a party to or interested in the proceedings before the Bureau. Pursuant to the transfer legislation, BSEA and its caseload are managed independently of DALA's other operations.

BSEA provides a broad range of dispute resolution services concerning eligibility, evaluation, placement, individualized education programs (IEPs), special education services and procedural protections for students with disabilities. The Bureau's dispute resolution services include providing mediations, hearings and advisory opinions. Within the last five years, BSEA has also provided facilitators for school districts' IEP

meetings. Parties to these proceedings may include parents, school districts, private schools, the Department of Education and other state agencies. BSEA's case flow over the last eleven years can be seen in Appendix A on page 10.

ACHIEVEMENTS

In recent years, DALA has worked to enhance its operations and improve overall service delivery. Several of the Division's major achievements are highlighted below:

- In June and July of 2012, DALA completed the last phase in a project to consolidate its operations with BSEA. The consolidation involved transfer of personnel from DESE, negotiation of operating and inter-agency service/funding agreements between DALA and DESE, and the merger of both operations into one location at new offices at One Congress Street. The consolidation has enabled DALA to integrate the administrative staffs of the two operations, eliminating one reception function and applying the saved resource to other areas. From external constituents' point of view, the transfer has been seamless.

- Also in July of 2012, the Division sponsored, in conjunction with the Office of the Attorney General, the first training program of its kind for magistrates, hearing officers and their equivalents. A total of 115 individuals attended the training, representing 22 state agencies. This program was held again in January of this year and is scheduled to run approximately every six months.
- With regard to general jurisdiction operations, DALA has maintained its ability to process priority cases notwithstanding having lost over 20% of its magistrate resources due to budget cuts. In the last calendar year, the Division, for the first time in the last 10 years, closed more cases than it received.
- Similarly, as reflected in its 11-year statistics, BSEA has managed a 15% increase in its case load without additional resources while continuing to maintain a national reputation as one of the most innovative and effective special education dispute resolution agencies in the nation.

- DALA recently initiated a program to develop practical technology to permit remote participation in agency proceedings. For example, in one recent hearing a witness in Brazil testified over an internet-based video conference facility. Remote access will provide for more cost effective, customer-focused service delivery.

CHALLENGES

While DALA has continued to improve its operations with great success, the Division faces a number of resource and political challenges that could potentially impact its ability to achieve its strategic goals if not addressed.

On the general jurisdiction side, DALA has consistently run a deficit in the number of cases processed in relation to the number of cases filed by an average of 344 cases per year for at least the last eleven years. As a result, DALA's current backlog is 5,172 cases as shown in the graph in Appendix B on page 11. With limited resources of only 10 magistrates, DALA's principal challenge is to reduce its backlog while maintaining the quality of its adjudications.

This deficit is the result of two primary factors. First, the Division is very small but

with a broad scope of jurisdictions. As a result, while the magistrate resources may be adequate for a normal case flow, there is little flexibility for responding to unusual circumstances. For example, a spike in enforcement cases in one area can disrupt the normal case flow causing a backlog and delays in all other areas. Second, and equally important, the Division has had a policy of providing an evidentiary hearing for every case, regardless of whether such an evidentiary hearing is necessary or appropriate. As a matter of constitutional due process law, an evidentiary hearing is required only in cases in which there is a genuine dispute as to a fact that is material to the outcome of the case. However, rather than decide on summary disposition cases in which there is no factual dispute or the relief sought is clearly determined as a matter of law, the Division historically has permitted the parties to conduct an evidentiary proceeding to allow them to "tell their story".

Currently, the Division is close to being able to handle its incoming case volume with existing resources; however, the challenge will be to design an effective program to deal with the backlog with no additional permanent resources. This will involve use

of temporary and part-time magistrates and efficient management of the cases.

Beyond managing the backlog, DALA is working to become a viable Central Panel solution for due process hearings for other agencies in the Commonwealth. In order to execute this goal, DALA must develop an alternative operating arrangement for new jurisdictions that ensures the Division has the necessary resources to process agency cases. This means that before the Division can agree to take on additional cases, the agency requesting DALA's services will need to provide funding to support additional magistrate resources through an inter-agency service agreement.

With regard to BSEA appeals, an analysis of 10-year statistics shows a steady growth in caseload. DALA anticipates that the volume of BSEA appeals will continue to grow over time. Therefore, BSEA will be challenged to maintain its current high-quality operation with likely no additional funding or staff.

Despite the challenges that confront DALA, the Division is confident that through the execution of its strategic plan it will continue to successfully achieve its mission.

STRATEGIC GOALS

SUPPORTING THE SECRETARIAT

As an agency affiliated with the Executive Office for Administration and Finance, DALA advances several of A&F's strategic goals including Better Performance and Better Government. DALA is committed to improving the effectiveness and efficiency of its operations as well as enhancing customer service. As depicted in the following pages, each of DALA's strategic goals link to one of A&F's overarching goals. Through this alignment A&F and DALA are working together to build a better Commonwealth.

DALA'S STRATEGIC GOALS

DALA has seven strategic goals which will collectively shape its work over the next two years. Through the execution of its strategic plan, DALA will implement new and creative methods to eliminate its backlog. This will include use of unpaid law student interns to assist magistrates in decision drafting and temporary and part-time magistrates as the budget permits to supplement the Division's hearing capacity. DALA also intends to continue to apply intense case management practices to streamline cases consistent with the parties' due process rights.

To improve customer service and reduce the parties' costs, DALA has established two

additional hearing venues to conduct hearings in locations more convenient to the parties, their counsel and witnesses. DALA intends to establish more venues as the budget permits. The Division is also continuing to develop protocols and facilities to permit parties and witnesses to participate in hearings and other proceedings remotely through teleconferencing and similar technologies. Remote access, where feasible, eliminates the need for parties and non-essential witnesses to be physically present, allowing for a more complete record and a less costly presentation.

DALA intends to continue its magistrate/hearing officer training program, and make it available to all magistrates/hearing officers and their equivalents in all agencies throughout state government. Not only does this ensure the continued expertise of DALA's own magistrates and hearing officers, but fosters expertise and uniformity of "best practices" in all Commonwealth agencies.

With regard to BSEA, the Bureau will work to maintain its current high standards and operational practices as well as prepare for an expected increase in its caseload.

Seven Key Goals

General Jurisdiction

1. Eliminate the current backlog of pending cases
2. Ensure timeliness and efficiency of adjudications
3. Foster use of DALA as a central panel for adjudications in the Commonwealth
4. Ensure that staff continue to exemplify the highest level of impartiality, integrity, and expertise in the substantive areas of law applicable to DALA's adjudications
5. Develop mechanisms and procedures to minimize parties' costs and enhance customer service

The Bureau of Special Education Appeals

6. Maintain current timeliness and quality of dispute resolution of special education appeals
7. Prepare for an increase in the special education appeals caseload

ACTIONS

DALA will take the actions set forth below to deliver its strategic goals.

GOALS	ACTIONS
A&F Better Performance: Provide state government services and programs more effectively, efficiently and equitably	
Eliminate the current backlog of pending cases	<ul style="list-style-type: none"> • Develop a temporary contract-magistrate program designed to be funded on an ad hoc basis • Develop alternative financing mechanisms such as inter-agency funding agreements or chargebacks that provide resources to DALA commensurate with an agency's caseload in exchange for meeting time standards for the agency's cases • Develop a volunteer new graduate full-time intern program to assist in processing cases • Communicate and engage with agency and other stakeholder representatives, legislators and residents about the management of administrative adjudicatory matters
Ensure timeliness and efficiency of adjudications	<ul style="list-style-type: none"> • Assign cases immediately following initial filing to a magistrate having a reasonable caseload for active management and prosecution to completion • Develop a regulatory and non-regulatory procedural framework that encourages and supports efficient case management • Develop and execute internal case management practices that support efficient and effective case prosecution • Support effective management of matters by other agencies to assist them to deal with cases effectively before they come to the Division • Implement a new case management system for the General Jurisdiction side

GOALS	ACTIONS
Foster use of DALA as a central panel for adjudications in the Commonwealth	<ul style="list-style-type: none"> Promote central panel solution to administrative dispute resolution Ensure that additional jurisdictions come with sufficient resources to ensure timeliness and quality Communicate and engage with agency and other stakeholder representatives, legislators and residents about the management of administrative adjudicatory matters
BSEA: Maintain current timeliness and quality of dispute resolution of special education appeals	<ul style="list-style-type: none"> Maintain current operations and practices
BSEA: Prepare for an increase in the special education appeals caseload	<ul style="list-style-type: none"> Continue study on other forms of alternate dispute resolution such as the use of the Facilitated Individual Education Plan Meeting program
A&F Better Government: Build trust in government by improving accountability, transparency and responsiveness	
Ensure that staff continue to exemplify the highest level of impartiality, integrity, and expertise in the substantive areas of law applicable to DALA adjudications	<ul style="list-style-type: none"> Continue to develop and implement training programs for hearing officers/magistrates Continue management and peer review of decisions and implement corrective measures where review indicates need Ensure that the workforce understands the public service responsibilities and objectives of the agencies DALA serves and comports their activities consistent with those responsibilities and objectives through training and monitoring of magistrate performance
Develop mechanisms and procedures to minimize parties' costs and enhance customer service	<ul style="list-style-type: none"> Work with IT to develop resources to permit remote access to proceedings Develop procedures to identify cases that can be disposed of in summary proceedings

OUTCOME MEASURES

DALA will utilize the high-level performance measures below to assess success in achieving its strategic goals.

GOAL	MEASURE	DEFINITION/NOTE	DATA SOURCE	FREQ.
Eliminate the current backlog of pending cases	# of non-BSEA cases in the backlog	A total count of non-BSEA cases in the backlog by agency/category	Database	Quarterly
	# of cases pending	The total number of non-BSEA cases pending by agency/category	Database	Monthly
	# of cases opened	The total number of new non-BSEA cases opened by agency/category	Database	Monthly
	# of cases closed	The total number of non-BSEA cases closed by agency/category	Database	Monthly
Ensure timeliness and efficiency of adjudications <i>Note: The Division's database currently does not have the capability to distinguish between priority cases and those that are not. DALA believe this distinction is important and expects to be able to track cases on this basis in the future.</i>	% of total case load open between 0-180 days	The percent of the caseload, excluding BSEA and rate setting cases, open between 0-180 days	Database	Quarterly
	% of total case load open between 181-365 days	The percent of the caseload, excluding BSEA and rate setting cases, open between 181-365 days	Database	Quarterly
	% of total case load open greater than 365 days	The percent of the caseload, excluding BSEA and rate setting cases, open greater than 271 days	Database	Quarterly
	% of hearings per cases closed	The total number of cases heard divided by the total number of cases closed	Manual record/data-base	Quarterly
Foster use of DALA as a central panel for adjudications in the Commonwealth	# of cases referred to DALA by other agencies	A total count of cases referred to DALA by other agencies (e.g. Civil Service Commission)	Manual Record	Monthly
	# of new jurisdictions utilizing DALA for due process hearings	The number of new agencies referring all or part of their caseload to DALA	Manual record/database	Yearly
BSEA: Maintain current timeliness and quality of dispute resolution of special education appeals	# of IEPs in the Commonwealth	Number of IEPs in the Commonwealth	DESE	Yearly
	# of cases opened	Number of new cases opened	Database	Yearly
	# of FIEP's conducted	Number of Facilitations of IEP meetings conducted	Manual record	Yearly

GOAL	MEASURE	DEFINITION/NOTE	DATA SOURCE	FREQ.
	# of mediations conducted	Number of mediations conducted	Database	Yearly
	# of hearings held	Number of hearings held and decisions issued	Database	Yearly
<p>Ensure that staff continue to exemplify the highest level of impartiality, integrity, and expertise in the substantive areas of law applicable to DALA adjudications</p> <p><i>Note: DALA believes the best measure here is the performance of its decisions on appeal. However, for cases in the general jurisdiction unit in which the Division's decision is a recommended decision to an agency, DALA is not a party to an appeal of the agency's final decision and is not able to track the decision beyond the agency level.</i></p>	% of mediations resulting in agreement	Percent of mediations resulting in agreement	Database	Yearly
	% of decisions affirmed	Percent of decisions affirmed for BSEA cases; decisions or recommended decisions adopted by agency or affirmed by the next administrative or judicial level for general jurisdiction cases	Database for BSEA cases and manual record for general jurisdiction cases	Yearly
	% of decisions reversed	Percent of decisions reversed for BSEA cases; decisions or recommended decisions rejected by agency or reversed by the next administrative or judicial level for general jurisdiction cases	Database for BSEA cases and manual record for general jurisdiction cases	Yearly
	% of cases remanded	Percent of cases remanded	Database for BSEA cases and manual record for general jurisdiction cases	Yearly
Develop mechanisms and procedures to minimize parties' costs and enhance customer service	# of cases in remote locations	Total number of cases held in remote locations	Manual Record	Quarterly
	# of cases in which a witness, party or interpreter participates remotely	Number of cases in which a witness, party or interpreter participates remotely	Manual Record	Quarterly

BSEA STATISTICS												
EVENT	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
IEPs		150,003	150,551	154,391	157,108	160,752	163,396	164,298	166,037	164,847	164,711	163,679
Rejected IEPs	5,505	5,140	5,013	5,515	6,609	5,475	6,245	7,401	7,252	7,875	8,348	8,460
FIEPs						7	18	45	63	111	123	143
Mediation Requests	620	600	650	601	660	773	841	906	846	854	1036*	1237
Mediations	620	600	650	601	660	773	841	906	846	854	809	917
Hearing Requests	538	566	647	648	768	568	592	618	609	545	544	582
Hearings	30	30	27	53	35	34	41	34	48	50	35	52

*The mediation request statistics beginning with 2011 include the following scenarios: mediations requested during prior FY but not held until reported FY; cases in which there was an initial request for mediation, but later one party opted not to proceed with the process; cases in which there was a request for mediation but the parties resolved the matter in advance of the scheduled mediation.

DALA GENERAL JURISDICTION BACKLOG GROWTH

